



FH

**STATE OF WISCONSIN
Division of Hearings and Appeals**

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

DECISION

CWK/157905

PRELIMINARY RECITALS

Pursuant to a petition filed May 22, 2014, under Wis. Admin. Code § HA 3.03(1), to review a decision by the Kenosha County Human Service Department in regard to Medical Assistance, a telephonic hearing was held on July 15, 2014. The record was held open for two weeks to allow the parties to submit additional information, which was received.

The issue for determination is whether the agency correctly denied the petitioner's request for MA-Waiver funding for golf lessons.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703

By: Chris Hribal, Coordinator for Special Needs
Kenosha County Human Service Department
8600 Sheridan Road
Kenosha, WI 53143

ADMINISTRATIVE LAW JUDGE:

Kelly Cochrane
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner is a resident of Kenosha County.
2. The petitioner receives medical assistance through the Children's Long Term Support (CLTS) Medicaid Waiver. He is diagnosed with Autism and ADHD.
3. The petitioner requested that the Waiver program pay for golf lessons.
4. On April 16, 2014 the agency issued a notice to petitioner stating that the request for golf lessons was denied because waiver funding excludes activities that are primarily recreation and excludes services that are not otherwise available through public education programs that provide after school supervision.

DISCUSSION

The Medicaid Home and Community Based Waiver (HCBW) programs were authorized by Congress in 1981, and began in Wisconsin in 1983 with the Community Integration Program. The CLTS program started on January 1, 2004, after the federal Department of Health and Human Services informed the State of Wisconsin that federal MA funding would no longer be available for in-home autism services. The Department of Health Services drafted and released the Interim Medicaid Home and Community-Based Waivers Manual (*Manual*) that became effective with the start of the CLTS program. The *Manual* also covers the Community Integration 1A and 1B programs and the Traumatic Brain Injury Waiver program. The *Manual* was updated in January 2010. It can be found on the internet at <http://www.dhs.wisconsin.gov/bdds/waivermanual/>.

The petitioner here is requesting private golf lessons in order to gain the golf skills necessary to secure a place on the school golf team in order to promote socialization with peers. Chapter IV of the *Manual* addresses the Allowable Services and Provider Requirements for the CLTS program. Sections 4.09-4.10 of Chapter IV outline the allowable services. Of the services that the requested golf lessons could fall into, the agency identified SPC 110 Daily Living Skills, SPC 706.20 Day Services (CLTS-DD), and SPC 113 Consumer Education and Training. The petitioner further identified SPC 513 Mentoring and SPC 514 Community Integration Services. See Appendix E of the Manual. I will address each category.

SPC 110 Daily Living Skills provides for "education and skill development or training to improve the participant's ability to independently perform routine daily activities and effectively utilize community resources." The agency representatives testified that this category was not considered appropriate for the golf lessons because it excludes activities that are primarily recreation. Petitioner's mother explained that the golf lessons are not meant to be primarily recreational, but rather to get the skills necessary so that he can have typical peer interaction once he makes it on to the golf team. However, I find that this category does not encompass the golf lessons here. Daily Living Skills are meant to improve the participant's ability to independently perform *routine daily activities* and include things like personal hygiene, food preparation, home upkeep/maintenance, money management, accessing and using community resources, community mobility, and parenting. Routine daily activities do not include golf skills, and there is nothing to suggest that golf lessons – the service sought – would be teaching petitioner anything except golf skills.

SPC 706.20 Day Services for children provide regularly scheduled activities for part of the day. Services include training, coordination and intervention directed at skill development and maintenance, physical health promotion and maintenance, language development, cognitive development, socialization, social and community integration and domestic and economic management. The agency representatives testified that this category was not considered appropriate for the golf lessons because it excludes any services available through public education programs funded under the Individuals with Disabilities Education Act. Petitioner's mother explained that the golf lessons were not available through the school

because the golf coaches do not have the time to devote the 1:1 instruction he needs. However, I find that this category does not encompass the golf lessons here mainly because the providers are:

required to have specialized training related to the child's unique needs in order to effectively address the needs of each child served in a particular program, and to ensure their health, safety and welfare. If these unique needs are generally related to emotional and behavioral needs the providers must have training specific to the child's needs and specific psychiatric/behavioral treatment plan. If these unique needs are generally related to physical, medical and personal care the provider is responsible for implementing specific activities or treatments as outlined in a medical plan of care... All children's day services programs must be licensed under applicable requirements of DHS 45 or DHS 46.

In other words, I do not find that there is evidence to show that the golf lessons would be tantamount to day services. Golf lessons teach golf skills. There is no evidence to suggest that the instructors would have the time, training or licensing required here to address the petitioner's emotional or behavioral needs at the same time as golf instruction, even if they are also special education teachers.

SPC 113 Consumer Education and Training (CET) include educational services to help a participant develop self advocacy skills, exercise civil rights and acquire the skills needed to exercise control and responsibility over their other supportive services. Educational services may include individualized tutoring and instruction, and instructional materials provided that the services (for children) are not funded by a program funded by the Individuals with Disabilities Education Act (IDEA). Covered expenses may include enrollment fees, books and other educational materials and transportation related to participation in training courses, conferences and other similar events that address the objectives of this service category. Again, I find that the golf lessons are for golf skills, not for the skills sought under CET.

SPC 513 Mentoring services are adult-supervised supports that are intended to improve the participant's ability to interact in their community in socially appropriate ways. The mentor provides the participant with such services as peer interaction, social/recreational and employability skill-building opportunities. The mentor supports the participant by practicing, modeling, guiding and shadowing them in the community. Interventions are spontaneous and in real-life situations, rather than in a classroom, workshop, or other segregated setting. These services again do not fit the requested 1:1 golf lessons, although mentoring services *does* appear to be the type of service he is ultimately requesting or needing.

SPC 514 Community Integration Services (CIS) include services and supports provide intensive case coordination and individualized community-based services. CIS can include daily living skills, mentoring, parent education and training, community integration activities, behavioral interventions, development and nurturing of natural supports, transportation, and respite services. The outcome of this program is to assist, empower, and build upon the strengths of the child and family in order to ensure that the child can be fully integrated into the community with their family. Again, I find that the CIS does not encompass 1:1 golf lessons.

The golf lessons are understandably requested here because petitioner's mother believes that they will allow him to acquire the golf skills necessary to get on the school golf team, which would then lead to the ultimate goal sought – typical peer interaction. However, even if I found the golf lessons were allowable, and with all due respect, there is no guarantee that he will even make the team. Her own testimony was that petitioner attends a large school where few kids make it on the golf team, and that the coaches do not have time for 1:1 instruction. It is unknown how long, at what frequency, and at what cost the golf lessons would have to be taken before petitioner acquires the golf skills to make the team. The testimony showed that he has opportunities for other peer interactions with track, bowling and video game club. And while I certainly understand that she wants the best for her son, Waiver funds are meant to be spent

on services that treat his disability. I cannot find under these policies here that the 1:1 golf lessons themselves would serve to directly treat his socialization/behavioral needs.

I add, assuming petitioner finds this decision unfair, that it is the long-standing position of the Division of Hearings & Appeals that the Division's hearing examiners lack the authority to render a decision on equitable arguments. See, Wisconsin Socialist Workers 1976 Campaign Committee v. McCann, 433 F.Supp. 540, 545 (E.D. Wis.1977). This office must limit its review to the law as set forth in statutes, federal regulations, and administrative code provisions.

CONCLUSIONS OF LAW

The agency correctly denied the petitioner's request for MA-Waiver funding for golf lessons.

THEREFORE, it is

ORDERED

The petition for review herein is dismissed.

REQUEST FOR A REHEARING

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied. To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted. The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found at your local library or courthouse.

APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be served and filed with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one). For purposes of appeal to circuit court, the Respondent in this matter is the Department of Health Services. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 1 West Wilson Street, Room 651, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400. The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Milwaukee,
Wisconsin, this 31st day of July, 2014

\sKelly Cochrane
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on July 31, 2014.

Kenosha County Human Service Department
Bureau of Long-Term Support